

**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**

In the matter of:)
)
 [Name redacted]) ISCR Case No. 15-05847
)
 Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

01/17/2017

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (SF 86 Format) on December 23, 2014. On March 5, 2016, after reviewing the application and information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a Statement of Reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.¹ The SOR detailed the factual reasons for the action under the security guidelines known as

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaced the guidelines found in Enclosure 2 to the Directive prior to September 1, 2006 and a copy of these guidelines was provided directly to the Applicant in this case.

Guideline B, Foreign Influence; and Guideline C, Foreign Preference. Applicant timely answered the SOR and requested a hearing.

On December 5, 2016, the hearing convened. Department Counsel offered two exhibits which were admitted without objection as Government Exhibits (Gov) 1 and 2. The Government also offered an administrative notice document which was marked as Administrative Notice Document I. Applicant testified and offered no exhibits. The record was held open to allow Applicant time to submit additional documents. On December 13, 2016, he timely submitted additional matters which were admitted without objection as Applicant Exhibits (AE) A (1 page), B (29 pages) and C (15 pages). At the close of the evidence and after reviewing all of the matters, on December 22, 2016, I proposed to the parties that this case was appropriate for a summary disposition in Applicant's favor. Applicant did not object. Department Counsel had 10 days to consider the matter and provided written notice that Department Counsel did not object on December 22, 2016.

Applicant mitigated concerns raised under Guideline C, foreign preference when he surrendered his valid Tunisian passport to his employer's security department. AG ¶ 19(a)(1) applied as a disqualifying condition. AG ¶ 11(e) mitigated the issue under Guideline C.

Applicant mitigated security concerns raised under Guideline B, foreign influence related to his mother, six siblings and in-laws being citizens of and residing in Tunisia. He also owned a condominium valued at \$120,000. Disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(e) apply. Foreign influence security concerns were mitigated because of Applicant's long-standing ties within the United States. His wife and children are citizens of and reside in the United States. His children were born here. Applicant immigrated to Canada in 1989. In 1997, he moved to the United States on an H-1B visa. Applicant has lived in the United States for 20 years and became a U.S. citizen in 2004. He has worked for his current employer since 1997 and is held in high regard. The value of his U.S. financial interests is greater than the value of the condominium he owns in Tunisia. He cannot be influenced because of this property. Foreign Influence mitigating conditions AG ¶¶ 8(b) and 8(f) apply.

Applicant's relationship with his mother, siblings and in-laws in Tunisia do not create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence. I also gave due consideration to the whole-person concept. Applicant has a lengthy favorable employment history with his employer. He has resided in the United States for 20 years. His wife and children are citizens and reside in the United States. Accordingly, I conclude that Applicant met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information. This case is decided for Applicant.

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Erin C. Hogan
Administrative Judge